



IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No.6280 of 2014
alongwith CWP No.850 of 2016
Reserved on : 07.11.2016
Date of Decision: 15.11.2016.

1. CWP No.6280 of 2014

The Senior Executive Engineer ...Petitioner
Versus
Mansa Ram ...Respondent

2. CWP No.850 of 2016

Mansa Ram ...Petitioner
Versus
H.P.S.E.B. LTD. & Anr. ...Respondents

Coram:

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. Satyen Vaidya, Sr. Advocate
with Ms. Priyanka Khenal
Advocate, in CWP No.6280 of 2014
and Mr. Virender Thakur,
Advocate, in CWP No.850 of 2016.

For the respondents : Mr. Virender Thakur, Advocate, in
CWP No.6280 of 2014.
Mr. Satyen Vaidya, Sr. Advocate
with Ms. Priyanka Khenal
Advocate, in CWP No.850 of 2016.

Chander Bhusan Barowalia, Judge

Both the aforesaid writ petitions are being
disposed of by this order, as common questions of law and
facts are involved.

¹Whether reporters of Local Papers may be allowed to see the judgment?

2. The above writ petitions are maintained by the employer and workman vice-versa against the award dated 14.1.2014 (Annexure P-8) in Reference No.103 of 2007, which was remanded back to the learned Tribunal by this Hon'ble High Court through Civil Writ Petition No.5344 of 2013, decided on 5.11.2013, with a direction to decide Issue No.4 afresh. Thereafter, the learned Tribunal decided Reference No.103 of 2007, vide its order dated 6.10.2012 (Annexure P-1) which is being assailed by both the employer and workman in these petitions.

CWP No.6280/2014

3. The petitioner-Board in this petition has prayed for the following relief :-

“for issuance of an appropriate writ, order or direction to quash and set aside the impugned Award dated 14.1.2014 (Annexure P-8) passed by the learned Labour Court-cum-Industrial Tribunal, Shimla, in Reference No. 103/2007.”

4. The petitioner is the H.P. State Electricity Board Ltd./employer (hereinafter referred to as “the petitioner”). The petitioner being aggrieved by the award dated 5.12.2013, passed by the learned Labour Court-cum-Industrial Tribunal (hereinafter referred to

as 'the Tribunal') in Reference No.103 of 2007 has assailed the same by way of present writ petition.

5. It has further been averred that on failure of the conciliation, the State Government sent the following reference for adjudication to the learned Labour Court-cum-Industrial Tribunal, Shimla:

“Whether the termination of services of Sh. Mansa Ram son of Sh. Hazaru Ram workman by the Senior Executive Engineer, Electrical Division, HPSEBL, Arki, Distt. Solan, H.P. w.e.f. 21.8.1994 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

6. It has been submitted that the respondent/workman (hereinafter referred to as “the workman”), pursuant to such reference, filed his statement of claim/demand alleging therein that he had been engaged as Beldar Board w.e.f. 26.3.1982 and thereafter his services were terminated orally on 20.2.1995, without any compensation and notice. It was also alleged that he had completed 240 days in a calendar year and a number of juniors are working in

HPSEB Division, Arki, however, the workman has not been re- engaged. It has also been alleged that in the year 1995, the respondent(workman) fell ill and submitted his medical leave, but the petitioner/Board did not allow him to work and thereafter, the respondent submitted various representations to the petitioner. So, the disengagement was alleged to be wrong and in complete violation of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act.

7. In reply to the reference petition filed by the petitioner/Board, it was alleged that the reference petition was being hit by delay and laches and the standing orders of HPSEB were not applicable upon the workman. It was stated on merits that though the respondent was engaged on 26.3.1982, but his services were not orally terminated on 20.2.1995, as alleged, rather the respondent did not work continuously during the aforesaid period and had never completed 240 days in a calendar year or preceding 12 months of his termination. It has also been alleged that the petitioner/Board did not terminate the services of

respondent and, in fact, the respondent/workman had left the job at his own and thus the workman had not performed his duties regularly, as per the requirement of the department. It has also been alleged that the respondent worked with the petitioner-Board till 20.2.1995 and thereafter, he left the job and did not report for duties. The respondent remained absent so many times during the aforesaid period and that the petitioner annexed the man-days chart to show the period in which the respondent/workman actually worked with the petitioner.

8. It has been submitted that the respondent filed rejoinder to the reply, wherein he reasserted and reiterated the averments made in the petition and stated that number of juniors, namely Rakesh Kumar, Baldev Singh, Mast Ram etc. etc. were still working in Arki Division. In reply, the petitioner had took a specific stand that the respondent had submitted the demand notice after a period of nine years. It has been submitted that the learned Tribunal framed, as many as, four issues and the respondent was

examined as PW-1. The learned Labour Court-cum-Industrial Tribunal, Shimla, vide its order dated 6.10.2012, held that termination of the services of the respondent had been effected without complying with the provisions of the Act and issued directions for reinstatement of the respondent in service with immediate effect with seniority and continuity of service, but without back wages.

9. It has been submitted that the petitioner assailed the award by way of filing CWP No.5344 of 2013 and this Court had ordered to set-aside the findings of the learned Tribunal, vide judgment dated 5.11.2013 and remanded back the matter to the said Tribunal for its decision afresh on Issue No.4.

Issue No.4 reads as under :

“Whether the reference, at the instance of respondent employee, was hit by delay and laches ?

To answer this Issue, learned Tribunal merely observed thus:

“*Issue No.4.*

19. For the reasons recorded hereinabove while deciding Issues No.1 &3, the services,

of petitioner were illegally terminated on 21.8.1994 by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Therefore, there is no question of any delay and laches. Hence, this issue is also decided against the respondent.”

However, the petitioner was granted liberty to re-assail the findings on all the issues and in case, the said learned Tribunal decide Issue No.4 against the petitioner, it will be open to the petitioner to challenge the said findings in appropriate proceedings and in accordance with law. Thereafter, the learned Tribunal decided Issue No.4 against the petitioner, vide its order dated 14.1.2014.

10. The petitioner has challenged both the orders 6.10.2012 & 14.1.2014, respectively, passed by the learned Tribunal and submitted that the learned Tribunal has erred in not dismissing the reference petition on the ground of delay alone, more particularly, when it was the admitted case of the respondent/workman himself that he had been

initially engaged on 26.3.1982 and was terminated on 20.2.1995, and the demand notice came to be submitted only after a period of nine years.

11. It has been further contended that the award dated 14.1.2014, passed by the learned Tribunal, is perverse being against the specific mandate of this Court. It has also been contended that the learned Tribunal was legally bound to consider the effect of delay and laches.

12. In reply to the petition, the respondent has submitted that he had filed a Reference, which was decided by the learned Labour Court on 6.10.2012. It has also been submitted that the petitioner had also filed writ petition and challenged the award of the learned Labour Court in CWP No.5344 of 2013, which was remanded back to the learned Tribunal on 5.11.2013, directing it to decide Issue No.4 afresh and answer the same on its own merit and in accordance with law. The learned Labour Court was also directed to decide the issue of delay and laches. It has also been submitted that the learned Labour Court decided the

above mentioned Issue on merits, after hearing both the parties and gave full opportunities to the parties in the lis to defend their case and the issue was decided in favour of the respondent/workman. It has been submitted that the learned Tribunal below has passed the impugned award in favour of the respondent. It has also been submitted that the respondent/workman is fighting for his claim for the last more than 12 years and indulgence of this Hon'ble Court is required to protect the lawful rights of a poor worker so that justice is done to him.

CWP No.850 of 2016

13. By way of filing this petition, the petitioner(hereinafter referred as “the petitioner/workman”) has prayed for the following relief :-

“for issuance of an appropriate writ, order or direction to the respondents to pay the back wages to the petitioner from the date of his termination from service till the date of his reinstatement in service will all consequential benefits such as regularization, seniority, continuity in service, increments etc. etc.”

14. The petitioner/workman has submitted that he was initially engaged by the respondent-Board on daily wages basis, as Beldar, on 26.3.1982, and worked as such upto 20.2.2015. Further, it has been submitted that in the month of February, 1995, his services were terminated by the respondent/Board (hereinafter referred to as "the Board) orally without issuing any notice or any compensation.

15. It has been contended that the petitioner, at a number of times, made written representations, as well as oral requests and also visited the office of the board, i.e. Sub Divisional Officer, HPSEB, Darlaghat, wherein the petitioner requested for his re-engagement, but nothing was done. The petitioner, in the year, 2003 filed an application before the learned Labour-cum-Conciliation Officer, Shimla alongwith representation to the respondent/Board for his re-engagement in the service. It has also been alleged that the respondent/Board terminated the services of the workman orally and without complying the provisions of the Industrial Disputes Act.

16. It has been contended that the Labour-cum-Conciliation Officer had tried to settle the matter between the parties and ultimately the Labour-cum-Conciliation Officer sent a failure report to the Labour Commissioner, Shimla, Himachal Pradesh, in the year 2004. The learned Labour Commissioner, Shimla, sent the Reference under Section 12 of the Act to the learned Labour Court-cum-Industrial Tribunal, Shimla, for adjudication to the following effect:-

“Whether the termination of services of Sh. Mansa Ram son of Sh. Hazaru Ram workman by the Senior Executive Engineer, Electrical Division, HPSEBL, Arki, Distt. Solan, H.P. w.e.f. 21.8.1994 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

17. It has been submitted that the petitioner had filed the statement of claim before the learned Labour Court, which was contested by the

respondent/Board. The petitioner stated that number of junior workers were engaged by the respondents-Board after his termination, therefore, he has prayed for his re-engagement with all consequential benefits alongwith back-wages, seniority and continuity in service, as the services of the petitioner/workman were terminated by the respondents without complying with the provisions of Industrial Disputes Act, 1947.

18. The respondents contested the claim of the petitioner and objected the same on the ground of delay and laches. However, the respondent/Board admitted that the petitioner was engaged by it on 26.3.1982, but the petitioner/workman left the job at his own and did not come again to join the service.

19. It has also been contended that the learned Labour Court-cum-Industrial Tribunal had framed four issues before deciding the reference and after scrutinizing the facts and circumstances, the learned Labour Court-cum-Industrial Tribunal, Shimla decided the Reference in favour of the petitioner on 6.10.2012. The learned Labour Court, Shimla, allowed

the reference and held that termination of the services of the petitioner was improper, unjustified and bad and the said Court below had reinstated the services of the petitioner with seniority and continuity in service, but without any back-wages.

20. It has been averred that against the award of the Labour Court, Shimla, dated 6.10.2012, the respondent/Board filed a Civil Writ Petition No.5344 of 2013, with a prayer that the learned Labour Court had not decided the issue of delay and laches and no findings have been given on the issue by the learned Labour Court. This Court vide order dated 5.11.2013, set aside the findings recorded by the Learned Labour Court, Shimla, on Issue No.4 only and remanded the reference to the Learned Labour Court for answering the same on its own merit in accordance with law. It has been averred that this Hon'ble Court had remanded the reference to the Labour Court to decide Issue No.4 on merits and the Learned Labour Court gave a specific finding and allowed the Reference vide its order dated 14.1.2014.

Issue No.4 read as under ;

“Whether the reference, at the instance of respondent employee, was hit by delay and laches ?

To answer that issue, learned Judge merely observed thus:

“Issue No.4.

19. For the reasons recorded hereinabove while deciding Issues No.1 & 3, the services, of petitioner were illegally terminated on 21.8.1994 by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Therefore, there is no question of any delay and laches. Hence, this issue is also decided against the respondent.”

21. It has been contended that the learned Labour Court-cum-Industrial Tribunal, Shimla decided the reference in favour of the petitioner and held the petitioner entitled for re-instatement in service with immediate effect with seniority, continuity in service, but without back-wages.

22. Reply to the reference petition was filed by the petitioner. The respondent/Board has submitted that petition suffers from the vice of delay and laches

and the same is nothing, but a counterblast to CWP No.6280 of 2014, filed by respondent No.2 against the petitioner in this Court. It has also been submitted that the allegations with respect to the retrenchment of the petitioner are baseless, as a matter of fact, the petitioner had left the job at his own.

23. It has also been denied that the petitioner has been making representations orally, as well as, in writing. Without admitting the claim of the petitioner, demand notice, which was served upon the petitioner in the year 2003, i.e., after a period of more than 8 years from the date of alleged retrenchment, disentitles him to the relief as claimed. It has also been submitted that the respondent/Board has already challenged the award passed by the learned Labour Court, Shimla, on 14.1.2014, by way of CWP No.6280 of 2014, which is also being disposed of with this petition. Therefore, the respondent/Board has denied all the allegations levelled in the present petition. The respondent/Board has submitted that the relief granted by the learned Labour Court-cum-Industrial

Tribunal to the petitioner/ workman are wrong, illegal and impermissible in law.

24. The respondent/workman has also assailed a writ petition on the ground that the learned Labour Court-cum-Industrial Tribunal, Shimla has no jurisdiction in not granting the back wages him, so the judgment of the learned Tribunal be modified and the respondent-Board be directed to pay all the benefits including the back wages to the petitioner/workman.

25. Heard the learned counsel for the parties.

26. The petitioner had placed on record the copy of seniority list, which he obtained under the Right to Information Act. The seniority list has not been disputed by the respondent-Board, as no cross-examination of petitioner/workman, as to the said seniority list, was conducted by the respondent/Board. The seniority list reveals that after 20.8.1994, the respondent/Board had engaged other workers namely, Dineshwar Sharma, Roshan Lal, Ramesh Pal, Trilochan Singh, Mast Ram etc. The witness of respondent RW-1 Inder Singh in his cross-examination

had expressed his ignorance whether any junior workman was engaged after petitioner left the job.

This evasive reply on the part of the witness of the respondent is sufficient to suggest that he had not specifically denied the plea of the petitioner that in fact junior workmen were engaged by the respondent after the termination of the petitioner. Moreover, the seniority list is sufficient to establish that junior workmen were engaged by the respondent after the retrenchment of the petitioner. Hence, there is also violation of Section 25-H of the Industrial Disputes Act, 1947, as no opportunity was given to the workman by the employer/Board to re-engage him.

27. However, the reference was received in the learned Labour Court-cum-Industrial Tribunal, Shimla, in the year 2007, so it cannot be believed that from 1994 to 2007, the petitioner/workman remained without any job. So, it can safely be inferred that during the said period, the petitioner was gainfully employed. So, the petitioner was rightly held not entitled for the back wages. Further, as the services of

the petitioner were illegally terminated, therefore, this Court finds that the learned Tribunal has rightly exercised its jurisdiction.

28. The Hon'ble Supreme Court in a case titled ***Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Limited (2014) 11 Supreme Court Cases 85***, has held as under :-

“18. The appellant has claimed that the High Court has modified the award passed by the Labour Court which has awarded reinstatement of the appellant with full back wages and other consequential benefits to simply awarding compensation to the tune of Rs. 1,00,000/- by the High Court in lieu of reinstatement with back wages and consequential benefits which order is bad in law in the light of the legal principles laid down by this Court in the catena of cases.

19. In the case of *Heinz India (P) Ltd. v. State of U.P.*, this Court, on the issue of the power of the High Court for judicial review under **Article 226**, held as under:

“60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review'

one is instantly reminded of the classic and oft quoted passage from *Council of Civil Service Unions v. Minister for the Civil Service*, where Lord Diplock summed up the permissible grounds of judicial review thus:

“.....Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as “*Wednesbury* unreasonableness”. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their

training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system... ..

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

21. The judgments mentioned above can be read with the judgment of this Court in Harjinder Singh's case, the relevant paragraph of which reads as under:

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the [Industrial Disputes Act](#) and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the

Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

“10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.” ([State of Mysore v. Workers of Gold Mines](#)¹³, AIR p. 928, para 10.)

22. A careful reading of the judgments reveals that the High Court can interfere with an order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction

conferred upon it. Therefore, we accordingly answer the Point (i) in favour of the appellant.”

29. It can easily be construed from the analysis of the record that since the respondent-Board has not given any opportunity to the petitioner for re-engagement, therefore, the action of the respondent-Board is in violation of Section 25-H of the Industrial Disputes Act, 1947. This Court finds that the award passed by the learned Tribunal is just, reasoned and after appreciating the facts, which has come on record to its true perspective.

30. In these circumstances, this Court finds that the impugned awards dated 6.10.2012 and 14.1.2014 passed in Reference No.103/2007, by the learned Labour Court-cum-Industrial Tribunal, Shimla, are just reasoned and after appreciating the facts, which have come on record to its true perspective and calls for no interference.

31. Accordingly, there is no merit in the instant petitions hence, both the petitions deserve dismissal and are accordingly dismissed.

32. All pending application(s), if any, shall also stands disposed of accordingly. No order as to costs.

(Chander Bhusan Barowalia)
Judge

November 15,2016.
(M. gandhi)

High Court of H.P.

High Court of H.P.